No. 80588-1

SUPREME COURT
OF THE STATE OF WASHINGTON

SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT PROJECT, a Washington Non-Profit Corporation; and NORTHSHORE UNITED CHURCH OF CHRIST, a Washington Public Benefit Corporation,

Petitioner,

v.

CITY OF WOODINVILLE, a Municipal Corporation,

Respondent.

RESPONDENT CITY OF WOODINVILLE'S RESPONSE TO BRIEF OF AMICI CURIAE RELIGIOUS CONGREGATIONS

Greg A. Rubstello, WSBA #6271
J. Zachary Lell, WSBA #28744
Attorneys for City of Woodinville
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447-0215

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Tables of Cases

Constitutional Provisions

Statutes

Other Authorities

A. SUMMARY OF ARGUMENT

Amici Religious Congregations take significant license with the record in formulating and asserting their arguments to this Court. First, neither the Superior Court nor Division I of the Court of Appeals ever attempted to "second guess" the manner in which the Northshore United Church of Christ ("NUCC") chose to practice its faith.[1] The relief granted to the City of Woodinville by the trial court—and upheld by the Court of Appeals—does not preclude the Church from hosting Tent City 4[2] (or any other homeless encampment) on the Church's property in the future. It also does not prevent NUCC from hosting, financing or otherwise supporting temporary encampments located outside the area covered by the City's temporary permitting moratorium. Instead, the court's relief simply requires NUCC to comply with local zoning and permitting requirements, as well as the Church's own contractual commitments.[3]

Amici misstate the facts in making its summary argument, to wit: that the City, by "prohibiting outright the use of church property as a temporary homeless shelter, ...substantially burdens the exercise of religion ... ." This characterization is erroneous. The unchallenged factual findings of the trial court demonstrate that the City applied a pre-existing

---

1 Brief of *Amici* Religious Congregations at 1.

2 Tent City 4 is organized and run by Petitioner Share/Wheel a non-profit organization.

3 Although Woodinville Municipal Code (WMC) Section 21.32.120(1) allows a temporary use permit to be effective for a period of 180 from the date of issuance, WMC 21.32.120(2) permits temporary uses a maximum of sixty days for the permitted event to actually take place. *See* Appendix A hereto.

temporary (90 day) moratorium prohibiting the receipt and processing of any new land use permits for any of the properties within the R-1 Residential Zoning District.[4] The extent to which NUCC could have used buildings on the Church's Woodinville property to physically shelter or house homeless persons as a lawful accessory use under the City's zoning regulations was an issue not before the trial court.[5] The Church was not isolated or discriminated against by application of the then-existing moratorium. The scope of the moratorium, aside from being temporary, did not prohibit NUCC from housing the homeless within existing building(s) on the Church's property.

Amici's failure to base their argument on the trial court's unchallenged findings of fact has led them to include incorrect assertions in their argument. For example, *Amici* assert that the Court of Appeals misapplied the Religious Land Use and Institutionalized Persons Act ("RLUIPA")[6] in holding that the City's refusal to grant a temporary use permit allowing NUCC to establish a 60-day "tent city"[7] on its property did not impose a *substantial burden* on the Church's fee religious exercise of ministering to the homeless.[8] *Amici* recognize that NUCC bore the

---

[4] See Respondent/Cross-Appellant City Of Woodinville's Response and Opening Brief at pages 4 - 5, and paragraphs 2.7 - 2.9.

[5] See Respondent/Cross-Appellant City Of Woodinville's Response and Opening Brief at page 5, and paragraph 2.11.

[6] Pub. L. No. 106-274, 114 Stat. 803-807, codified at 42 U.S.C. "2000cc-2000cc-5.

[7] WMC 21.32.120 limits all temporary use permits to a 60 day duration. See Appenddix A hereto.

[8] Brief of Amici at 4.

burden of proving that the City's zoning regulations imposed a substantial burden on the Church's religious exercise.[9] However, the trial court's unchallenged findings of fact simply do not demonstrate that the temporary land use moratorium imposed the substantial burden required under RLUIPA.

Two recent cases from the Ninth Circuit interpreting RLUIPA, *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (citing with approval *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1029 (9th Cir. 2004)) support the Court of Appeals' determination that the City did not violate that statute in the instant case. The institutionalized persons cases, pre-RLUIPA cases, historic preservation cases, and Religious Freedom Restoration Act ("RFRA")[10] relied upon by *Amici* are not determinative of this matter. The Court of Appeals instead correctly cited to and relied upon *Guru Nanak* and *San Jose Christian*.[11]

Since there is no demonstration that a *substantial burden* was imposed on the free exercise of religion, RLUIPA's compelling interest test is inapplicable and not determinative of the outcome of this litigation. The City's temporary ban on permitting all new permits in its R-1 zoning district did not violate RLUIPA.

---

9 Brief of Amici Curiae Religious Congregations at 7.

10 42 U.S.C. Section 20000bb (1993).

11 *Woodinville v. Northshore United Church of Christ*, 139 Wash. App. 639, 657-658, 162 P.3d 427 (2007).

B. ARGUMENT

1. *Amici* fails to demonstrate that the "substantial burden" requirement of RLUIPA was over come by NUCC.

Amici acknowledge at bottom of page 7 and the top of page 8 of their briefing that:

> **Under RLUIPA, the plaintiff bears the burden of proving that the challenged law substantially burdens plaintiff's religious exercise.** Once a substantial burden on religious exercise is established, the burden of proof shifts to the government to establish a compelling government interest in its law or regulation. ...

(Emphasis added.)

The facts before the Court do not demonstrate that Woodinville imposed a substantial burden on the free exercise of religion. Therefore, the Court need not even examine *Amici's* arguments that the City's refusal to accept the untimely temporary use permit application due to the then-existing temporary moratorium does not survive strict scrutiny.

Although NUCC could have obtained a temporary use permit up to 4 months prior to the start of the temporary land use activity (*see* Appendix A) it waited until a few week prior to the start of the activity to bring a permit application to the City. By then, the moratorium was in place, and even without the moratorium, there was insufficient time to

process the permit application under the procedure in the City's zoning code.[12]

a. Current Ninth Circuit case law supports the Court of Appeals' Determination.

The City's actions did not prohibit NUCC from obtaining a temporary permit to allow a temporary homeless encampment on its property in the future. The Court of Appeals appropriately distinguished the facts of the Ninth Circuit's opinion in *Guru Nanak*:[13]

> ...The court held that the county greatly oppressed the society's religious exercise because the second denial "to a significant great extent lessened the possibility that future [conditional use permit] applications would be successful." The court specifically noted that the county's reasons could apply to future applications, and that the society "readily agreed" to conditions and mitigation measures the county suggested. (citations omitted)
>
> In contrast, in *San Jose Christian*, the Ninth Circuit held that the city did not substantially burden a college's exercise of its religion when it denied the college's incomplete zoning application. The court reasoned that the was no evidence that the city would deny the application if the college properly submitted a complete one. There was also no evidence that the college could not use an alternative site to fulfill its religious exercise. (citations omitted)

---

[12] See paragraphs 2.1 -2.4 of RESPONDENT/CROSS-APPELLANT CITY OF WOODINVILLE'S RESPONSE AND OPENING BRIEF. The trial court's finding were unchallenged on appeal.

[13] *Woodinville v. Northshore United Church of Christ*, at 657.

As in *San Jose Christian*, here there is no evidence that NUCC could not submit a timely application and obtain a temporary use permit allowing installation of the Tent City 4 encampment on its property. The injunctive relief ordered by the trial court and affirmed by the Court of Appeals in no way prohibits or impairs the Church from submitting a timely and complete application in the future. This case is factually distinguished from *Guru Nanak*.

b. *Greene v. Solano County Jail* and other federal case cited by *Amici* are distinguishable.

Besides the obvious difference of having been decided under the provision of RLUIPA addressing institutionalized persons rather than local land use restrictions, *Greene v. Solano County Jail*, 513 F.3d 982 (9th Cir. 2008), cited by *Amici*, is clearly distinguishable from the instant case on its facts. In *Greene*, a county jail imposed an absolute rule refusing to allow maximum security prisoners to engage in group worship. The maximum security prisoner challenging the county's action was afforded absolutely no opportunity to engage in group worship whatsoever.

Moreover, the City of Woodinville moratorium at issue in the present case did not prohibit permitted accessory uses. Whether or not NUCC could have opened its doors and provided sanctuary or temporary shelter to the homeless in existing buildings on the Church property (as an accessory use) was, as noted in the trial court's unchallenged findings, not an issue before the trial court. The record is absent of any indication that

NUCC ever attempted to shelter or provide sanctuary in existing Church buildings for the occupants of Tent City 4 or to other homeless persons. The pre-RLUIPA cases and post RLUIPA cases cited by *Amici* involving homeless shelters are simply not on point either factually, legally or both.

C. CONCLUSION

Since the City of Woodinville did not impose a substantial burden on the exercise of free religion, strict scrutiny of the City's land use regulations under RLUIPA, as argued by *Amici*, does not apply under the circumstances of this case. The Court of Appeals correctly determined that the City did not violate RLUIPA, and this holding should be affirmed by the Supreme Court.

RESPECTFULLY SUBMITTED this 12th day of May, 2008.

OGDEN MURPHY WALLACE, P.L.L.C.

By: _____
Greg A. Rubstello, WSBA #6271
J. Zachary Lell, WSBA #28744
Attorneys for Respondent,
City of Woodinville

FILED AS ATTACHMENT TO E-MAIL.

APPENDIX A

Woodinville Municipal Code Section 21.32.120

a. 21.32.120 Temporary use permits– Duration and frequency.

Unless specified elsewhere in this chapter, temporary use permits shall be limited in duration and frequency as follows:

(1) The temporary use permit shall be effective for no more than 180 days from the date of the first event or occurrence;

(2) The temporary use shall not exceed a total of 60 days; provided, that this requirement applies only to the days that the event(s) actually takes place;

(3) The temporary use permit shall specify a date upon which the use shall be terminated and removed; and

(4) A temporary use permit shall not be granted for the same temporary use on a property more than once per calendar year; provided, that a temporary use permit may be granted for multiple events during the approval period. (Ord. 175 § 1, 1997)